



# Generally Speaking

## COMINGS and GOINGS

### *Please welcome:*

**AAG Alice “Ali” Rahoi** to the Anchorage Torts and Worker’s Compensation Section. AAG Rahoi will be representing the Division of Risk Management in tort litigation.

**AAG Brad Meyen**, who fills the newly created Endangered Species Act position in the Anchorage Natural Resources Section. Brad joins the department from private practice in Anchorage.

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The Anchorage DAO welcomes **ADA Paul Miovas** to the narcotics unit. Paul hails from Georgia, but spent two years in Hawaii before fulfilling his dream to live in Alaska.

**ADA Brent Williams** started in the Kodiak DAO coming from Boston by way of New Mexico. The office reports he has settled into Kodiak and is adjusting to the alternately snowy/rainy weather which typifies Kodiak in winter.

The Fairbanks DAO welcomed **ADA Corrine Vorencamp** back from maternity leave on December 31.

The Juneau Human Services Section reports AAG Libby Bakalar went on maternity leave effective December 26 and is expected to return to the section in March.

Congratulations to **Imogene Samuelson**, who was promoted from LOA II to Victim/Witness Paralegal in the Bethel DAO.

## KUDOS

### **Holiday Charity Drive A Success!**

During December the department’s Juneau offices conducted a food drive for the Southeast Alaska Food Bank and collected cash contributions for Meals on Wheels for seniors. The office topped its prior record for donations by donating over 1,300 pounds of food for families in need and \$1,680 to supply meals to seniors in Juneau. Special thanks to Kevin Messing and Chris Blair for coordinating the drive, and thanks to all who participated!

## CIVIL DIVISION

### Child Protection

**New CINA cases** based upon allegations in OCS petitions:

OCS took emergency custody of an infant boy and his 16-year-old mother after the police responded to a domestic violence call at their home. The 16-year-old mother was intoxicated and had been drinking with her own mother with the infant present. No appropriate relatives were available to take the children.

In the summer, OCS became involved with a family with three young children after the 2-year-old was beaten by her father. The father was removed from the home and OCS was monitoring the children with their mother. In December, OCS was made aware that the mother had allowed the father to move back into the home. The mother states the assault by the father was unintentional. The father is facing numerous assault charges stemming from the beating. OCS removed the children and placed them with a family member.

OCS assumed emergency custody of an infant born drug exposed. OCS had been working with the mother, who already had two children in the system. Shortly after the child's birth, OCS was made aware that the father has an extensive domestic violence history and family connections to illegal drugs. The department is attempting to locate a relative placement.

A hospital reported that a baby was born to a mother who appeared to have significant mental health issues. Further investigation revealed that the mother, who has been diagnosed with schizophrenia, is not medication compliant and had had trouble understanding her pregnancy for some time. She has substance abuse issues and the father of the child is unknown. OCS assumed emergency custody.

OCS assumed emergency custody of three children after reports were made that the mother was using excessive corporal punishment on the children. When OCS interviewed the mother, she indicated she had been trying to call OCS all day because she didn't want to have to take care of the kids anymore. The father had recently been released from jail, but was not an appropriate caregiver due to prior reports that he also beat the children.

Numerous children across the state were taken into custody due to serious risk of harm as a result of their parents' substance abuse, domestic violence and/or parents' incarceration.

### **Activities**

Section Chief Carla Raymond attended the National Court Improvement Project (CIP) Conference in Washington, D.C. The local CIP sponsored her attendance. She gathered quite a bit of information regarding funding sources for training, ideas for community partnership and preparation for the upcoming federal review of OCS.

The section had a good time decorating for and participating in the Department of Law Christmas party. They were pleased to receive an honorable mention for their decorating endeavors.

## Human Services

### **Litigation Update**

Section Chief Stacie Kraly filed a brief with the supreme court in *Alaska Open Imaging, LLC, and Dr. Bridges v. Commissioner Jackson and Fairbanks Memorial Hospital*. In addition, she is working on a cross motion for summary judgment in the *Dr. Bridges, Aurora Diagnostic Imaging v. Karleen Jackson* matter. Cross motions for summary judgment are complete in the *Mat-Su Valley Hospital vs. Advanced Medical Centers, DHSS* case and a bench trial is a month away.

AAG Calik had a long and complicated oral argument in the *Radenbaugh* matter. It was on motion for a temporary restraining order related to the PCA program. The section is waiting for the decision from the court; AAG Calik did an outstanding job.

AAG Polizzotto also did a great job with back-to-back oral arguments on two medicaid audit appeals.

The section is in the midst of a discovery dispute with counsel in the *Curyung* matter and is working on a response to a motion to compel which is due in January. This past month the section prevailed on two very important procedural motions. The court granted the section's motion to strike the jury demand and denied the opposition's motion to amend the complaint.

A new case was served on the section related to the Bureau of Vital Statistics practice vis-à-vis tribal birth certificates. The case is brought by Alaska Legal Services on behalf of Tlingit and Haida.

AAG Polizzotto is working on her first supreme court appeal. In this case, the section prevailed in superior court on the administration of the food stamp program. Alaska Legal Services has appealed.

The section also received an order in a class action lawsuit on the interim assistance program, granting the Northern Justice Project attorneys fees under both Rule 82 and the common fund doctrine. The section is evaluating whether to appeal.

#### **Medicaid Subrogation/Liens**

During the month, the Medicaid subrogation/lien recovery team resolved 18 tort reimbursement claims for a total recovery of \$91,767.99. At this time, there are 677 open reimbursement claims. The total number of claims resolved is

now 1,128. The total amount collected during calendar year 2007 is now \$1,356,913.52.

#### **Other**

#### **APS/API**

AAG Russo spent the first part of the month prepping for a contested (between family members) guardianship that Judge Morse was finally able to help partially settle at a settlement conference, which followed several unsuccessful attempts at mediation over the summer. Russo's preparation included a number of depositions, which are outside of the norm for guardianship cases.

AAG Russo also successfully resolved another contested APS matter involving an elderly woman with many children who could not unite around a single plan for their mother until APS got involved. AAG Russo continues to be involved in more and more mediations.

#### **Public Assistance**

The section continued to work on due process training with the Department of Health and Social Services during the month. Section Chief Kraly filled in for AAG Bakalar, who was scheduled to provide a primer on due process for public assistance trainers. This completes a year of outreach by the section to provide notice and regulatory training to most if not all "line" employees of the Department of Health and Social Services who are responsible for writing notices that need to comply with due process. The section will continue the training of the department's employees in the coming year.

#### **Labor and State Affairs**

#### **Court System**

On December 12 Judge Spaan granted AAG Joan Wilkerson's Civil Rule 12(b)(6) motions to dismiss the complaints against Judges Rindner and

Tan in *DeNardo v. Maassen II* on grounds of judicial immunity. The complaint was also dismissed as to the Alaska Bar Association and Mark Woelber.

## Elections

The state was sued on November 27 by a subsidiary of Northern Dynasty in the clean water initiative matters. There are now three complaints pending against the Lieutenant Governor in Fairbanks Superior Court, and one matter on appeal to the Alaska Supreme Court. The lawsuits all address whether two of the three so-called clean water initiatives should be certified, which must occur before the initiative petitions can be circulated for voters' signatures. The initiatives address water quality and would affect large metallic mineral mining operations. One of the complainants (Council of Alaska Producers) moved on December 10 for a preliminary injunction directing the Lieutenant Governor to withdraw certification of two of the initiatives and to enjoin consideration of signatures gathered for the initiatives. The first and third initiatives have been certified. The first one was certified only after Judge Torrisi issued an order requiring certification in October. That order has been appealed to the Alaska Supreme Court. AAG Mike Barnhill is handling these matters.

## Employment

On December 12 Judge Smith denied a motion for preliminary injunction in *Peterson v. Department of Natural Resources*. An unsuccessful applicant had sought to enjoin the state from allowing a successful applicant to begin work. The basis for the denial was the absence of a showing of irreparable harm and of a probable success on the merits. AAG Mags Paton-Walsh is representing the department in this employment matter.

On December 14 Margaret Ward filed a motion for a rehearing en banc of the November 8 decision by the United States Court of Appeals

for the Ninth Circuit in *Ward/Jones v. State*. The Court had held that 11th Amendment sovereign immunity barred claims by individuals against the state under the Government Employees Rights Act ("GERA"). GERA was enacted in 1991 to extend the protections of Title VII to elected officials' personal staff and advisors. Samuel R. Bagenstos of Washington University of St. Louis is representing Ms. Ward on the motion. The Department of Justice filed its motion for rehearing and for rehearing en banc on December 21. AAG Brenda Page took on this matter after AAG Richard Postma's appointment to the state court bench.

On December 19 AAG Brenda Page argued before the Alaska Supreme Court in *Beegan v. Department of Transportation and Public Facilities* (DOT/PF). The case is a wrongful termination claim by a former DOT/PF employee seeking to re-litigate claims that were heard before the Alaska State Commission for Human Rights. DOT/PF's position is that judicial review of AS 18.80 human rights claims should be by appeal from the commission's decision and not by initiating a new civil action in superior court. More specifically, DOT/PF maintains that Mr. Beegan's human rights claim for back pay is barred by the doctrine of collateral estoppel and, alternatively, by the statute of limitations.

On December 19 Juneau Superior Court Judge Pallenberg issued his written findings of fact and conclusions of law in support of his November ruling from the bench in *Cashen v. Department of Administration*. The court dismissed this Whistleblower Act and retaliation complaint after concluding that the state did not retaliate against Dan Cashen when it demoted him from his position as maintenance foreman. Although the court found a prima facie case of retaliation, he concluded that the state met its burden of producing admissible evidence of a legitimate, non-retaliatory reason for the demotion. AAG Mags Paton-Walsh handled the matter with assistance at trial from AAG Jessica Srader.

## Retirement and Benefits

On December 6 the attorney general filed *Alaska Retirement Management Board v. Mercer (US)*, Inc., in Alaska Superior Court in Juneau against the former actuary for the PERS and TRS pension plans. The complaint seeks more than \$1.8 billion in damages from Mercer for mistakes in calculating the plans' expected liabilities, including mistaken actuarial assumptions and methods about future healthcare costs, and basic mathematical and technical errors. The state is represented by the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP. AAG Mike Barnhill is the department contact.

In November the Office of Administrative Hearings issued its final decision in an appeal from the denial of a request to reclassify a former employee's time as a fish and wildlife enforcement officer to time as a peace officer for purposes of retirement benefits. The applicant worked for a number of years as a fish and wildlife enforcement officer accruing regular PERS retirement credit before becoming a state trooper, when he began accruing credit under the peace officer benefits plan. Because the applicant waited 15 years to file the claim to reclassify his fish and wildlife enforcement officer time as peace officer time, and because he did not justify the delay, the administrative law judge concluded that appeal was barred by laches. AAG Gina Ragle handled this matter for the Division of Retirement and Benefits.

**Special thanks** to LOA Lisa Long, AAG Krista Stearns, paralegal Kamie Willis and everyone responsible for the holiday parties.

## Legislation and Regulations

The Legislation and Regulations Section spent a busy month editing and legally approving for filing the following regulations projects: 1. Board of Game (hunting seasons and bag limits for black bear in Unit 1(D)); 2. Joint Boards of Fisheries and Game (advisory committee composition);

3. Division of Corporations, Business, and Professional Licensing (fees for several regulated professions); 4. Local Boundary Commission (local boundary changes and petition procedures); and 5. Department of Health and Social Services (treatment of newborns' eyes, and newborn hearing screening program; residential psychiatric treatment centers).

The section also conducted training for attorneys to include legislative typing and preparation, and legislative procedures. Preparation for the 2008 regular legislative session is underway.

## Natural Resources

### Another Busy Month for Endangered Species Act Issues

December was another busy month on the Endangered Species Act (ESA) front. AAG Steven Daugherty assisted the Alaska Department of Fish and Game with development of comments on proposed listings of Lynn Canal herring and the black-footed albatross, proposed critical habitat for the North Pacific right whale, and development of a request for a six month extension for the Cook Inlet beluga listing decision to allow assessment of 2008 survey data.

### Oral Argument Completed in State Limited Entry Takings Case

On November 29 AAG Steven Daugherty participated in oral arguments before the Alaska Supreme Court in *Vanek v. State*, an appeal from dismissal of a class action filed by Arthur Robinson in which Cook Inlet fishermen Stephen Vanek, David Martin, Steve Tvenstrup, Tim Keener, Kenneth Coleman, Douglas Blossom, and Mark Drucker sought a declaratory judgment that regulations adopted by the Alaska Board of Fisheries from 1996 through 2002 constituted a taking of their limited entry permits and shore fishery leases without just compensation.

Anchorage Superior Court Judge Sen K. Tan granted the state's motion to dismiss. Judge Tan agreed with the state that plaintiffs lack a cognizable property interest in the use of their permits. He also held that, while shore fishery leases grant an interest in land, board regulations can not constitute a taking of that interest under the conditions of the leases, and that even absent the lease conditions, validly adopted board regulations could not constitute a taking under Alaska's *Sandberg* factor analysis.

In the section's supreme court briefing, it was pointed out that if the limited entry and shore fishery lease programs were interpreted to grant property interests in the harvest of fish to individual fishermen, the programs would then conflict with the "common use" and "no exclusive right of fishery" provisions of the Alaska Constitution. In addition to filing the *Vanek* appeal, Arthur Robinson has filed a nearly identical case, *Vandevere v. State*, with different named plaintiffs, in federal court. That case is being handled by Senior AAG Lance Nelson. The state has requested a stay in *Vandevere* pending a ruling from the Alaska Supreme Court in *Vanek*.

#### **Federal Subsistence Issues Continue**

On December 12 AAG Mike Sewright filed the state's opening brief before the Ninth Circuit in *State v. Fleagle*. This is an appeal from a decision of U.S. District Court Judge Russel Holland upholding a customary and traditional use (C&T) determination by the Federal Subsistence Board (FSB) granting a priority to take moose under the federal program in all 10,000 square miles of Game Management Unit 12 based on evidence of use in at most 25 percent of the unit. In addition, AAG Sewright continued to assist outside counsel in ongoing litigation involving federal claims to expansive subsistence jurisdiction based on federal reserved water rights claims.

AAG Steven Daugherty assisted the Alaska Department of Fish and Game with developing comments on a number of FSB fishery regulatory proposals and a proposed customary and traditional use determination policy. In addition, AAG Daugherty attended the December 11-13 Federal Subsistence Board (FSB) regulatory meeting during which fishery proposals were considered. At that meeting the FSB rejected a state proposal to eliminate the FSB's existing customary and traditional use (C&T) determination allowing subsistence fishing on the Juneau road system by any rural resident of the Southeast Alaska or Yakutat areas and continued to ignore state conservation concerns for steelhead stocks in Southeast Alaska. The board narrowly rejected a proposal which would have expanded the federal program by attempting to regulate gear in state commercial and subsistence fisheries on sections of the Yukon River where federal reserved water rights are claimed.

#### ***May v. CFEC (Southern Southeastern Inside sablefish longline fishery) and May v. CFEC (Southern Southeastern Inside sablefish pot fishery)***

On December 21 the Alaska Supreme Court affirmed the Commercial Fisheries Entry Commission (CFEC) final decision that Bert May was ineligible to apply for a permit in the Southern Southeast Inside pot fishery; however, the Court also held that the CFEC erred in determining that May was not eligible to apply for a permit in the Southern Southeast Inside longline fishery and remanded the case to the CFEC for consideration of May's challenge to the maximum number of permits in that fishery.

In these cases, Bert May challenged the denial by the CFEC of his applications for entry permits in the Southern Southeast Inside sablefish (black cod) longline and pot fisheries. May contended that CFEC erred in its determinations that he was ineligible to apply for permits in the fisheries and that he was not entitled to any points. He also claimed that the CFEC erred in determining the maximum number of permits for both fisheries.

The Court held that CFEC was correct in determining that May was not entitled to any points in the longline fishery, but found that the CFEC's determination that May was not eligible to apply for a permit in the longline fishery was not supported by substantial evidence. The Court also held that May has standing to challenge the maximum number in that fishery and remanded the case to the CFEC for consideration of that challenge. The Court also affirmed the superior court's decision upholding the CFEC determination that May was not eligible to apply for a permit in the pot fishery and, therefore, the Court did not consider his arguments regarding the award of points or the maximum number in that fishery. AAG Vanessa Lamantia represents the state in these matters and will be filing a petition for rehearing on the Court's holdings regarding the longline fishery.

#### **Matanuska Maid**

December 7<sup>th</sup> was the deadline for submitting bids to purchase the real and personal property owned by the Agricultural Revolving Loan Fund and the Creamery Corporation, dba Matanuska Maid. No bids were received. Nevertheless, the dairy is no longer receiving or processing milk and continues to wind up its affairs. AAG Tina Otto continues working with the Board of Agriculture and Conservation and the Department of Natural Resources during this period of winding down Matanuska Maid. The Southcentral Dairy Joint Venture has entered into an equipment lease agreement and license agreement with the Creamery Corporation to lease certain equipment and to use the Matanuska Maid logos. It is anticipated that the joint venture will begin receiving and processing all Alaskan dairy products in early February 2008.

#### ***Akiachak et al. v. Dept. of Interior and Kavairlook v. Dept. of Interior***

AAG Anne Nelson and Section Chief Elizabeth Barry filed a motion to intervene in the consolidated cases *Akiachak, et al. v. Dept. of*

#### ***Interior and Kavairlook v. Dept. of Interior.***

Plaintiff tribes (Akiachak, Chalkyitsik, Tuluksak, and the Chilkoot Indian Association) and Alice Kavairlook (a member of the Native Village of Barrow) seek to have lifted the regulatory bar prohibiting the Secretary of Interior from taking land in Alaska into trust for the benefit of federally recognized tribes and their members. The plaintiffs seek the right to petition the Secretary to take into trust non-ANCSA conveyed land that they currently own in fee. Land taken into trust could potentially be determined to be Indian country, which, with the exception of the Annette Islands Reserve, does not exist in Alaska. The case implicates issues pertaining to the state's sovereignty as well as the scope and finality of the settlement codified in ANCSA.

#### **Oil, Gas, and Mining**

The State of Alaska and BP Exploration (Alaska), Inc. settled a tax dispute concerning outstanding corporate income tax liabilities. The taxes related to disputed amounts for tax years 2000 through 2002. Per the terms of the settlement, BP paid the state \$379 million on December 31, 2007. The funds were deposited in the Constitutional Budget Reserve Fund. Section Supervisor Tina Kobayashi and AAG Anne Johnson represented the state.

#### **Opinions, Appeals and Ethics**

##### **Ethics**

AAG Judy Bockmon completed two investigations and is working on four open matters. She also issued two opinions and presented ethics training to the Office of the Governor, the Alaska Permanent Fund Corporation, and the Board of Dental Examiners. She continues to work on the manual for ethics supervisors.

## Appeals/Litigation

**Marshall S. v. State.** The Alaska Supreme Court released an unpublished decision in *Marshall S. v. State*, DHSS, OCS, S-12569. The Court affirmed the trial court's termination of a father's parental rights to his daughter.

The case involved a father who, despite knowing of his girlfriend's pregnancy in 2002, disappeared from Alaska and made no attempt to follow up. Due to the mother's substance abuse problems, in 2004 the state Office of Children's Services (OCS) took the child into state custody and unsuccessfully searched for the father, who was running from the law for unrelated criminal charges. Told by a relative in 2005 that he might have a child and that OCS was attempting to contact him, the father declined to contact OCS or the child's mother. In early 2006, OCS began termination proceedings against the mother and the unknown father. In February 2006, OCS located the father in jail in California, established his paternity, and advised him to participate in services that were available to him in jail.

The father received few services, because few were offered at the jail. Upon his release in September 2006, he provided faulty contact information to OCS. At the termination trial the following month, he argued that he was ready to step in and be his child's parent. He also moved to compel disclosure of the child's medical records and to obtain telephonic visitation. The trial court terminated his rights and he appealed, challenging the court's findings that he had abandoned his child, that OCS had searched diligently for him, and that OCS had provided him with active efforts at reunification. He also challenged the trial court's denial of his motions for discovery and for telephonic visitation.

The supreme court affirmed, holding that OCS made reasonable efforts to locate the father, and that, given his incarceration and failure to contact OCS after his release, the agency's efforts after his paternity was established constituted active

efforts under the Indian Child Welfare Act. The Court upheld the trial court's finding that the father had consciously abandoned his child. Finally, the Court affirmed the trial court's denial of the father's motions, noting that his request for medical records was irrelevant to the case, and finding the trial court within its discretion in denying all visitations because the child had never met the father, identified her foster parents as her family, and would be confused by contact with the father. AAG Mike Hotchkin briefed the appeal; AAG David Noteboom handled the trial.

**RM and KM v. State, OCS.** AAG Mary Lundquist had oral argument in front of the Alaska Supreme Court in *RM and KM v. State, OCS*. This is an appeal by adoption petitioners (who were the child's foster parents in the CINA case) from a trial court decision denying their adoption of the CINA child, and approving OCS's placement of the child. The state cross appealed, arguing that the trial court had incorrectly found that OCS had unreasonably withheld its consent to the adoption given its determination that the child should be placed in the ongoing CINA case with the family friend (a determination which was upheld by the trial court). Additionally, it is the state's position that OCS does not have authority to consent to the adoption of a CINA child until the parent's parental rights have been terminated. The mother's parental rights had not been terminated in this case, and she had not consented to the adoption. The child is in a stable placement with a family friend (who used to be an aunt by marriage) and also living with a cousin and grandmother. The section is hopeful that the denial of the adoption will be affirmed on appeal.

## Opinions

In response to a legislator's inquiry, the section reviewed the legislative history of a statute that requires a court order before the name or picture of a child in need of aid may be made public in connection with the child's status as a child in need of aid. The section specifically considered whether the statute required a court order for a



foster child's self-disclosure, and potential constitutional problems with applying the requirement to children's self-disclosure. Ultimately, Attorney General Colberg determined that the Department of Law would not take the position that the statute requires foster children to obtain a court order before publicly identifying themselves as foster children or speaking publicly about their experiences in the foster care system.

## Regulatory Affairs and Public Advocacy (RAPA)

### **Stipulated Settlement**

**RCA/U-07-108, GVEA power transmission.** In a matter of first impression, Golden Valley Electric Association (GVEA) proposed a common transmission service tariff (a "wheeling" rate) and agreements for point-to-point service. AIDEA, Homer Electric Association, Chugach Electric Association, Anchorage Municipal Light & Power, and the attorney general/RAPA intervened in the proceeding, primarily because of prospective impacts on the interconnected railbelt energy grid and intertie.

After a commission-ordered workshop and subsequent discussions, the parties resolved all concerns and filed a stipulation for settlement with the RCA on December 14. The stipulation provides: that GVEA will perform a cost of service study within three years after service begins under the tariff; that the tariff will be revisited if a regional transmission entity becomes operational or if uniform rail belt interconnection standards are adopted, and further clarifies GVEA is not offering any form of retail wheeling through the tariff. The filed stipulation awaits commission disposition.

### **New Case**

**U-07-161, CVTC competitive entry rate modification.** Copper Valley Telephone Cooperative (CVTC) filed a petition for competitive entry rate modification because of anticipated local service competition from GCI within certain parts of its service area, initially in Valdez. The filing involves matters of first impression regarding implementation of a commission regulation (3 AAC 53.245) designed to allow an historical monopoly provider to selectively adjust rates to meet competitive entry. The rate revisions are based upon a revenue requirement study approved in U-07-38 and a disaggregation plan filed in U-07-116.

The attorney general/RAPA filed a notice of election to participate on November 28, 2007. Because the utility effectively seeks pre-approval of future rate increase ceilings in noncompetitive parts of its service area, the proposal and related filings demand a high level of scrutiny. A procedural schedule has not yet been set.

### **Appeal Filed**

**4FA-07-1360 (RCA Dockets U-05-43/44), GHU/CUC.** On December 24, the attorney general/RAPA filed its brief of cross-appellant in superior court at Fairbanks on appeal from an RCA decision granting reconsideration to investor-owned water and sewer utilities, Golden Heart Utilities (GHU) and College Utilities Corporation (CUC).

The initial RCA decision adopted numerous rate case positions advocated by the attorney general at hearing that resulted in commission-ordered refunds to ratepayers in an amount to be determined. The RCA subsequently granted the utilities reconsideration of the order, as a result of which the refund obligation was reduced by an estimated one-half. Nevertheless, the utilities appealed the decision and order. The attorney general/RAPA cross-appealed the reconsideration, asking that the original order be reinstated.

## Torts and Workers' Compensation

A personal injury case, filed by a family who claimed to have been hurt during evacuation of the state ferry LeConte in Peril Strait, was tried to a Sitka jury in December. The claimed physical injuries did not stem from the ship's grounding in May 2004, but the lowering of a lifeboat in the ship's evacuation. The starboard lifeboat hung up on the ship's sponson while it was being lowered, eventually slipped off, swung out, and hit the ship's hull. Some of the family members (and other passengers) received medical treatment afterward; the mother was eventually treated for back, arm, and shoulder problems and claimed a permanent impact on her future ability to work and participate in subsistence activities.

Prior to trial the state agreed that the grounding of the ship and the lifeboat incident were negligent, and attempted to settle the case on several occasions, without success. The state was represented by private counsel from the firm Nicoll Black & Feig – Rivers Black and Chris Reilly – and assisted by AAG Susan Cox. At the close of the week-and-a-half-long trial, the state did not contest liability but asked the jury to award the plaintiffs reasonable damages for the injuries that were proven to be caused by the state's negligence.

The jury took four hours to award \$250 to one plaintiff, \$500 each to five of the plaintiffs, and \$47,433.80 to the mother (over half of which was for unpaid medical bills). The collective verdict of roughly \$50,000 represents a small fraction of what the plaintiffs were asking for at trial or had demanded previously. Because the state made an offer of judgment to the mother back in August, which was inclusive of costs, fees, and interest, the question of whether the mother or the state is the prevailing party entitled to an award of attorney's fees and costs is now being litigated.

## CRIMINAL DIVISION

### Anchorage DAO

The offices conducted 12 trials this month.

ADA Michelle Tschumper won a long-distance assault two trial involving a militantly recanting domestic violence victim. Venue changed from Sand Point to Valdez (Judge Shally's home turf). After pre- and mid-trial wrangling stranding nine Sand Point witnesses in Valdez, the jury convicted the offender of strangling his wife. Most noteworthy about this trial – the wife sat at the defense table during the entire trial.

ADA Rob Corbisier won a conviction of a juvenile for participating in a beat-down robbery at a local mall. The offender (and co-conspirators) beat and then took the wallet of another kid who apparently had the audacity to wear the wrong "colors."

ADA Ben Hofmeister secured the conviction of Mark Abrell for first degree sexual assault of a woman in August, 2005. Abrell, a previously convicted sex offender, faces 30-40 years for this newest offense.

ADA Aaron Sperbeck earned a conviction of Edrick Pointer for first degree sexual assault of an 18-year-old store clerk. The defense claimed consent by the clerk. He claimed he had just bought a cheeseburger and the clerk agreed to accept a sexual favor in lieu of payment. The jury disagreed.

Both sexual assault cases involved some limited video surveillance. Interestingly, both offenders claimed that the video supported their claims of consent. Because security video is often captured at a very slow speed (usually one frame per second) the defense argued that the videos did not show what was apparently obvious to the juries.

ADA Joe Kovac prevailed in his first DUI trial, a .09 offender who claimed his age contributed more to his failure of field sobriety tests than any alcohol. The problem was the offender was only 57.

ADA Emma Miller also had her first victory in a case involving a beating inflicted by a female defendant as part of a larger group of homeless folks who were mad at the victim, another homeless person.

ADA Michal Stryszak won a conviction of Diane Pickens, a perennial thief, of forgery. Ms. Pickens has an almost uncanny ability to con her victims into dropping charges by promising to marry them or otherwise compensate for their loss. Ms. Pickens faces three to five years for each forgery.

ADA Brittany Dunlop continued her streak by securing the conviction of Yosbany Moore on attempted sexual assault in the first degree. Moore grabbed a young woman outside her own home and started to drag her down an alley. The victim's screaming caused many neighbors to come out of their houses at 3:30 in the morning.

In a sentencing of note, Judge John Suddock sentenced Bradley Proctor to a maximum ten years for second degree assault after a severe beating and strangulation of a pair of deaf women. The women admitted to doing cocaine with Proctor, but also may have attempted to steal some of the cocaine.

### [Bethel DAO](#)

The offices had a steady stream of felony cases and continued to keep the grand jury busy during the month.

The Rural Prosecution Unit continues to travel to Bethel regularly. AAG Dwayne McConnell secured an indictment of a defendant who will be mandatory 99 years on each sexual abuse of a

minor count if convicted. AAG Regan Williams also got an indictment of a defendant on sexual abuse of a minor charge.

The Rural Unit continues to relieve pressure for the offices, which very much appreciate the unit's assistance.

ADAs Patty Burley and Chris Carpeneti were busy with misdemeanor trials throughout the month.

The office participated in the December 11 Village Police Safety Officer and trooper training regarding full faith and credit for tribal domestic violence restraining orders. The Bethel police department is down to three officers to cover the city and is being backed up by the state troopers for safety reasons.

### [Fairbanks DAO](#)

The Fairbanks DAO presented 36 cases to the December grand jury and had nine cases go to trial.

One of the grand jury cases illustrated why you would never want to take a cab to a drive-by shooting. When the defendant became upset with a woman he thought to be hiding his girlfriend, he called a cab to go to the home where he thought his girlfriend was being hidden. When he arrived he stood outside the cab without closing the door, and called the house on his cell phone and demanded to speak with his girlfriend (who was not there). Upon being advised that his girlfriend was not there, he pulled out a 9mm auto pistol from his waist band and fired two shots toward the offending apartment building.

When the cab driver saw the 9mm coming out of the defendant's waist band, he began to drive off, but his cab did not immediately move because the tires were spinning on the ice in the apartment parking lot. The defendant, with the smoking gun still in his hand, ordered the cab driver to stop, which, given the smoking gun, the driver decided was a good idea. The defendant

then jumped back in the cab and ordered the cab driver to take him to a local donut shop.

The defendant sat in the front passenger seat with his arms crossed and with the 9mm in his right hand, which was aimed generally in the direction of the driver. The cab driver was able to call his dispatcher using a code indicating that he was being ordered to drive under duress. Police were called and officers with the Fairbanks Police Department were able to intercept the cab one block before it got to the donut shop. The occupants in the apartment building were unaware that any shots had been fired in their direction. The defendant effectively turned a B felony misconduct involving weapons (for firing in the direction of an occupied building) into a felony assault and kidnapping for placing the cab driver in fear and making him drive the defendant to a distant location. The tentative target of the defendant's dissatisfaction told the officers that she didn't know who the defendant was, nor did she know his girlfriend.

On the positive side of things, an aggressive if-you-drink-don't-drive campaign by law enforcement in advance of the holiday weekends evidently kept many drunk drivers off the road and into cabs over Christmas and New Year's holidays. Drunk driving arrests were far fewer than expected, with no injury accidents attributable to drunk driving.

### Juneau DAO

On December 5 Jerry Nelson was convicted by a jury of theft in the second degree, criminal trespass in the first degree, and criminal trespass in the second degree. Charges stemmed from a September 22, 2007 incident where Mr. Nelson entered two local businesses and removed several items which he planned on selling to a local metal recycling business. Testimony offered at the trial revealed that Mr. Nelson had been paid over \$44,000 between May 15 and September 21, 2007 for items he had brought to the recycling business.

On December 21, the same Mr. Nelson was indicted for two counts of perjury for stating under oath that he had no income during the previous 12 months while he was being questioned by the court to qualify for appointed counsel on September 18 and 25, 2007.

On December 7 Nathan Solano was indicted for two counts of sexual abuse of a minor in the first degree stemming from an incident just after Thanksgiving involving sexual penetration with a 6-year-old victim. After the victim's mother had reported the incident to the local police department, Mr. Solano admitted his guilt to his own mother who in turn notified officers of Mr. Solano's confession to her.

Leon Paul was charged with two counts of assault in the third degree for strangling his girlfriend during an argument over the television remote control on the morning of December 13.

Daniel Strickland was indicted on December 14 for six counts of possession of child pornography. Mr. Strickland had over 1600 images of child pornography on various computer hard drives at his home. The case was investigated by Alaska State Troopers and Special Agents from Immigration and Customs Enforcement.

Also on December 14, Frances Demmert was indicted for hindering prosecution in the first degree. Ms. Demmert refused to allow US Marshals and local law enforcement officers working together on the Alaska Fugitive Task Force to enter her residence where she was hiding Adrian Paige. Mr. Paige had an outstanding felony warrant for violating his parole. This is the second time Ms. Demmert has been charged with hindering prosecution for harboring Mr. Paige and attempting to prevent officers from arresting him.

Jeffrey Malley was indicted for six counts of possession of child pornography on December 21. Mr. Malley had several hundred images and videos of children under the age of 12-years-old along with several thousand images and videos of

children most likely between the ages of 12 and 18-years-old. The images and videos were found among an extensive adult pornography collection.

Also on December 21, 2007, Larry Berryhill was indicted for three counts of sexual abuse of a minor in the second degree and one count of sexual assault in the second degree stemming from four separate incidents in 2000 and 2006. Mr. Berryhill was a volunteer pole vaulting coach at Brigham Young University in Provo, Utah and also owned and operated a fishing lodge in Gustavus, Alaska. During the summer, the lodge would be staffed with teenage boys who also used the time as a training program for pole vaulting. Mr. Berryhill would run the training program and then use the guise of therapeutic massage to assault his victims.

December was another busy month for drugs in Juneau. Laura Johnson was indicted for importing 184.8 grams of cocaine. Paul Defalco and Linda Layne were arrested in their home where officers located over six pounds of marijuana along with paraphernalia associated with packaging and distributing marijuana. A 17-year-old was arrested at his home after receiving a package containing 3.4 grams of heroin, 117 grams of psilocybin mushrooms and 176.6 grams of marijuana.

### Kenai DAO

There were many trials this month with many guilty verdicts.

ADA Scot Leaders did a felony assault trial in which the defendant, who was out on conditions of release on vehicle theft charges, punched out his third party's husband. The husband wound up hitting his head on a piece of the wooden structure of the house and, as a result, damaged his eye socket.

ADA Angela Jamieson, the office expert in failing to register as a sex offender cases, got a

conviction on a felony failure to register case in which the defendant claimed, as per the regulation, that he had not left his former residence with the intention of not returning. This case was especially troubling because the defendant was living with a woman with a child. As a result of the defendant living there, OCS took custody of the child. The defendant then lied about where he was living to try to get the child returned to the mother. Neither OCS nor the jury bought off on his argument.

ADA Jamieson also got a conviction on a felony assault in which the defendant attacked the victim on the couch in their home. Following the conviction, the defendant also pled to the next case awaiting him: tampering with a witness when he had the victim's mother put pressure on her to not cooperate in the prosecution of the assault.

ADA Devoron Hill's trial was against a woman who reported that her ex-boyfriend had assaulted her. Through the officers' investigation, they learned she had lied, and false report charges were filed against her. The defendant went so far as to roll around on the gravel driveway to scratch herself as evidence of the "crime." Her best friend witnessed her actions, came to court, and testified truthfully. The jury convicted in record time. Unfortunately, she only received a suspended imposition of sentence from the judge.

ADA Jean Seaton convinced the judge in Seward to convict a fisherman at an over limit of sable fish bench trial. The fisherman defended himself at his own peril. The judge told the defendant that the community takes these cases very seriously because he is literally taking food off their tables.

ADA Kelly Lawson got a conviction on Christmas Eve when the jury came back with a verdict that was sealed on the previous Friday night. The case was a DUI with a resisting count. The defendant was so combative during the arrest that a civilian witness who was driving by stopped to assist. The defense counsel, Chuck Robinson, tried to argue that the defendant wasn't really

resisting arrest; he was actually trying to escape. His argument was that the arrest was completed when the officer uttered the magic words and put his hands on the defendant. That argument did not convince the judge in the motion for a judgment of acquittal or the jury in closing.

The grand jury had a busy month as well with 12 assault cases, 4 drug cases, and 3 sexual abuse of minor cases. This was in addition to the usual variety of DUIs, eludings, burglaries, thefts, failure to appears, vehicle thefts, and fraudulent acts.

There has been a rash of bad checks being passed by six defendants working together using the checks to get each other food, clothing, auto parts, and toys such as a pool table, TVs, and other electronics. The grand jury indicted three of them for having passed several hundred bad checks totaling in the five-figure range, with more checks still coming in. Of the remaining defendants, one is a juvenile and the other two are pre-indictment accomplices.

During the course of an investigation into what could have been a misdemeanor assault, the troopers went to a residence in Seldovia to investigate. They found remains of a marijuana grow that the defendant had ripped apart when he heard the cops were called. The troopers next found the residence where the evidence was hidden and also found the defendant's snow machine that he had reported stolen a year before. They also learned additional information from the witnesses. All told, the defendant managed to turn a misdemeanor assault investigation into a fraudulent insurance acts case along with a felony assault and a tampering with evidence case.

Another defendant stole the truck of a victim who was unloading packages from the vehicle in the driveway of his home. When the victim took a load into the house, the defendant hopped in the truck with the keys still in the ignition and drove away, pausing before he left to steal some frozen meat from the freezer in

the garage. The defendant drove four blocks away and parked the truck in front of a local drinking establishment. The officers located the truck with the defendant's jacket in it and located the defendant at the bar with the very distinctive keys to the vehicle on the defendant's table. Crime, arrest and jail in record time.

It was definitely the season for domestic violence. There were seven domestic violence cases over the Christmas weekend. In one case earlier in the month, the defendant, who was in a truck, chased his wife and three children who were on foot. They ran into the woods to try to escape and their shoes were lost along the way. It was a cold, dark night for the escaping family until they got help with a ride from a stranger they flagged down on the road.

### Kodiak DAO

Kodiak was reasonably busy during December.

Mid-month, a Kodiak man was indicted for seven counts of weapons misconduct and forgery in the first degree after his probation officer paid a visit to his home and found seven loaded handguns and twelve counterfeit \$20 bills.

Another Kodiak man was indicted for felony assault when he pressed a loaded pistol to his mother's head after getting into an argument with her regarding his children.

A third Kodiak man was indicted after Christmas and charged with felony assault after he strangled the mother of his child following an argument. The victim told the investigating trooper the argument involved a disagreement about religion.

### Kotzebue DAO

On February 6, 2007, late into a night of drinking, Leon Mitchell was kicked out of his girlfriend's mother's house. The mother told Mitchell he would not see his girlfriend or the

young child they shared again. He responded by telling her he was going home to get a gun and would return and shoot her. The mother called for help on a VHF radio after hiding her daughter in the bedroom. As promised, Mitchell returned with a rifle and threatened to kill the mother. She told troopers she was afraid to turn and run for fear of being shot in the back. Earlier in the evening prior to grabbing the rifle, Mitchell had strangled the girlfriend. He also pointed the gun at a man who had to jump off his snow machine and run for cover when he drove up to the house. Mitchell pled to two counts of assault three. On December 18 he was ordered to serve a composite sentence of 48 months with 18 suspended on condition of three years probation. This was Mitchell's first criminal conviction. ADA Paul Roetman prosecuted the case.

### Palmer DAO

On December 5, a Palmer jury convicted Christopher Irick of robbery in the first degree, assault in the third degree, and assault in the fourth degree for robbing Chimo Guns in Wasilla. Irick became upset when advised he could not get a cash refund for ammunition. He put a handgun to the store owner's head and threatened to kill him if he was not given his refund. The owner opened the cash register, and Irick took the amount of his refund and fled. A customer got the license plate of Irick's car which led to his arrest two days later in Anchorage. The defendant also assaulted the police officer who made the arrest. The trial prosecutor was ADA Alison Collins.

On December 20, a Palmer jury found John Jemewouk guilty of felony refusal to submit to a breath test. The jury hung on the felony DUI charge. Jemewouk was found slumped behind the wheel of his car, and the defense argued that he was not operating the vehicle. The defense also contested the prior DUI convictions in the second portion of the bifurcated trial. ADA Suzanne Powell was the trial prosecutor.

In Valdez, Judge Joel Bolger sentenced Matthew Kompkoff to 60 years, with 20 years suspended, and 10 years of probation on a charge of murder in the second degree. Convinced his wife was going to leave him, Kompkoff stabbed her in the heart after drinking "homebrew" in the village of Tatitlek. The victim was taken by boat to Valdez, but died from the injury. The defense blamed the incident on alcohol. Kompkoff had a history of being violent while intoxicated, including an incident where Tatitlek residents had to tie him up and sedate him. ADA Mike Perry handled the case for the state.

Twenty-eight-year-old Heith Fithian was sentenced to six years, with three years suspended, on one count of attempted sexual abuse of a minor for his relationship with a 14-year-old girl. He received an additional six months on a charge of furnishing liquor to a minor. At his sentencing, Fithian acknowledged that he injured the victim both physically and mentally. Prosecuting the case for the state was ADA Rachel Gernat.

Daryl Atkins was sentenced to serve ten years with three years suspended on a count of first degree arson, and two years with one year suspended on a count of assault in the third degree. Atkins threw two "Molotov cocktails" through a second-story window of the victims' house. As the victims came out to investigate, Atkins shot at them with a .22 caliber rifle, injuring a dog. Earlier in the day, Atkins pointed the gun at another neighbor. Atkins told the police he worked for the FBI and was cleaning up the neighborhood of drug dealers. ADA Jarom Bangerter prosecuted the case.

A Palmer grand jury indicted Christopher E. Rogers, Jr. on charges of murder in the first degree, murder in the second degree, attempted murder, assault in the first degree, vehicle theft in the first degree and theft in the second degree. In Palmer on December 2 Rogers used a machete to kill his father and seriously injure his father's fiancée. Rogers then drove his father's truck to Anchorage where he shot three people killing one. Rogers was taken into



custody by officers of the Anchorage Police Department after a pursuit. The Palmer victims were Rogers' court-appointed custodians in a pending misdemeanor DUI case in the Palmer district court. The case is being handled by DA Roman Kalytiak.

## Office of Special Prosecutions and Appeals (OSPA)

### **Appellate Section**

Despite the holidays, the pace of the Appeals Unit of the Office of Special Prosecutions and Appeals did not slacken.

AAG Mike McLaughlin had two appellate victories for the month. In *Sarah Coffman v. State*, AAG McLaughlin convinced the Alaska Court of Appeals that the decision to appeal a sentence is for the attorney, and not the defendant to make (and consequently that the attorney does not have to appeal a sentence if no viable grounds are present). In *Stanley Mute v. State* (unpublished), AAG McLaughlin successfully defended the state's conviction of Mute for first degree sexual assault and two counts of second degree assault against Mute's claim that both his trial attorney and post-conviction relief attorney had been ineffective.

In *Leanne Wacker v. State*, the defendant argued that the prosecutor's rhetorical closing-argument question, "So I ask you, who has access to [a witness] if they want her here?" improperly shifted the burden of proof. The Alaska Court of Appeals was persuaded by AAG Blair Christensen that, in context, the disputed closing argument was instead a comment on the evidence and not improper.

### **Rural Prosecution Section**

The month of December saw all three attorneys travel to Bethel to work on specific cases and generally assist the office while there. AAG Regan Williams attended a Domestic Violence

Training Conference that consumed an entire week.

The offices also took over a multiple defendant cocaine case from the Kotzebue office.

In other matters, Jamison Wagner, who had been on the run for some months, was found and changed his plea to assault in the third degree, with sentencing next year. The incident was a drunken fight in a teacher's house that occurred in Emmonak. As part of the plea agreement Wagner is forfeiting, of course, the performance bond as well as \$8,100+ found in his room that the drug canine hit on as having been in contact with a controlled substance. Wagner had only been in the village for a short time and had no ties to it. After skipping bail and leaving his Anchorage third party custodian, he was arrested in Hooper Bay, at first giving a false name; he was also just visiting Hooper Bay.

### **Special Prosecution Unit**

#### **Fish and Game Offenses**

Rainbow King Lodge, Inc., an Alaska corporation located in Bristol Bay, Alaska, was convicted of two fish and game related violations. The lodge, one of the finest luxury wilderness lodges in the State of Alaska, employs as many as 15 guides, has 4 airplanes, 16 boats and accommodates as many as 25 guests per week all paying between \$5,000 - \$10,000 per person per week to fish. The corporation was criminally charged after repeated fish and game violations by the lodge owners and/or employees. Specifically, lodge employees received over 19 citations in two years in addition to numerous warnings for citable offenses. In accordance with a plea agreement providing for open sentencing, Rainbow King Lodge Inc. was convicted of one count of retaining halibut in violation of an emergency order and one count of a guide aiding in a violation. Judge Torrisi imposed a composite fine of \$30,000 with \$22,000 suspended and three years probation. The fines against the individuals would have ranged from \$100 to no more than a



maximum of \$500. Hopefully, the greater penalty will result in better compliance with fish and game regulations.

Craig Gustafson, 51, a resident of Kodiak, was charged in May 2007 for possessing more than the limit of Pacific cod pots, illegal storage and improper marking of pots. In March 2007, while actively fishing, Gustafson possessed as many as 96 cod pots at various times during the state season, giving him a significant advantage over other commercial fishermen who were limited to a total of 60 pots. Pursuant to a plea agreement, Gustafson was convicted of one class A misdemeanor for illegal possession of Pacific cod gear, and was by sentenced Magistrate Cole in Kodiak to a fine of \$15,000 with \$7,500 suspended, ten days in jail with all ten suspended, informal probation for five years and forfeiture of \$24,000.

Lester Conklin, 49, a resident of Maine, his wife Marie and son Jason Conklin were all convicted for operating an illegal hunting lodge out of Donkey Lake near Skwentna. The Conklins own and operate a hunting lodge in Maine and purchased the Alaskan lodge two years ago. The Conklins began selling guided fishing trips with "free" unguided black bear hunts. This "free" service included the use of bait stations, scent burns, and other hunting services all of which were illegally provided to the clients in the field.

A pre-charge Rule 11 agreement was reached in which the defendants pled to a total of 28 misdemeanor counts. They agreed to pay fines totaling \$202,000 with \$130,000 suspended; restitution and forfeiture for one brown bear and one black bear; forfeiture of the value of a guide boat and motor and a four-wheeler; in addition to revocation and loss of hunting and guiding privileges for a period ranging from five to ten years. This Rule 11 agreement resulted in a major cost savings for the state as a contested case would have resulted in the need for three trials as well as repeated travel for numerous out of state witnesses.

Carson Kemmer, 25, a resident of Ocean Park, Washington was sentenced under a Rule 11 agreement to six misdemeanor fish and game violations. Kemmer and his hunting partner Joseph Querrin came to Alaska in September 2006. Querrin, also a resident of Washington, purchased Alaska resident licenses and tags for sheep, bear, moose and caribou. Over the course of one week Kemmer killed a sheep, brown bear, moose and caribou. Kemmer was sentenced in November to pay fines totaling \$50,000 with \$27,500 suspended, restitution for all of the animals killed totaling \$5,985, a jail term of 90 days with all 90 suspended, loss of hunting privileges for a period of five years and forfeiture of all animals seized. Additionally, the search of Kemmer's Washington residence revealed the skull of an illegally killed Rocky Mountain big horn sheep. A warrant is still outstanding for Querrin.

Eric Spokely, 35, a resident of Lakewood, Washington was charged by troopers in May for numerous fish and game violations, including unlawful acts and unlawful possession. Spokely, and four co-defendants (including his wife) participated in a black bear hunt in the Ketchikan area for the purpose of creating a commercial hunting video. All five defendants ultimately entered into Rule 11 agreements with the state. Eric Spokely was sentenced to ten days in jail with all ten suspended, \$10,500 in fines with \$5,500 suspended, restitution of \$600 for the illegally killed black bear, forfeiture of the trophy sized black bear, five years informal probation, five year loss of hunting license, and forfeiture of all hunting gear and videos seized.

### **Alcohol Bootlegging Crimes**

Sylvia Woods, 24, was charged in September for importing 66 fifths of R&R whiskey into Ambler, a community of 275 residents located 130 miles east of Kotzebue and 45 miles north of the Arctic Circle. Ambler is a local option community that has banned the importation and sale of alcohol since 1981. At the time, Woods was on misdemeanor probation for two similar alcohol

importation offenses. Each of those cases had “warrantless search” probation conditions. When she was arrested in September, Woods initially refused consent to search, so officers relied on the warrantless search condition to inspect her baggage. They discovered 66 “burped” bottles of whiskey in her luggage. At the time of the search, Woods was breast-feeding her one-week old daughter. Woods subsequently told police she planned on selling the whiskey in Ambler for \$150 per bottle. In December, Woods requested that a felony change of plea hearing be set for February 2008.

In October, the Alaska State Troopers filed charges against Martha Thomas, 35, her sister Susan Aningayou, 20, and their brother, Brian Aningayou, 32 for using Thomas’s three minor children ages approximately 13, 16, and 17 to import alcohol into the village of Gambell during a period over eight months (mid-2006 through early 2007). Gambell is a village of 650 people located on St. Lawrence Island in the Bering Sea.

Gambell has banned the sale and importation of alcohol since 1981 and possession since 1986. In this case, the defendants were charged with a scheme which included concealing fifths of Monarch whiskey in the Thomas childrens’ carry-on luggage during flights from Nome to Gambell. Both Martha Thomas and her children told troopers that the fifths of whiskey sold for \$250 each in Gambell. Martha Thomas told troopers she used her children’s social security money and some of her child support money to buy the alcohol. All three defendants have scheduled their cases for change of plea and sentencing in Nome Superior Court in early January 2008.

### **Environmental Crimes**

In November 2007, the Environmental Crimes Unit resolved its most significant enforcement action in several years. British Petroleum Exploration (Alaska), Inc., entered a plea to one count of a misdemeanor federal Clean Water Act violation in U.S. District Court for the District

of Alaska. The company agreed to pay \$20 million in fines and restitution. The agreement called for a payment of \$4 million restitution to the State of Alaska and another \$4 million to be used for Arctic environmental research on the North Slope. OSPA AAG Daniel Cheyette, who is cross-designated as a Special Assistant U.S. Attorney, actively participated in this 18-month joint state-federal investigation.

In November 2007, the Environmental Crimes Unit resolved a prosecution of a Washington man, Jeremy Oliver, his Washington company, and a Florida investment company for a failed 2004 Dillingham area salmon cannery operation. The defendants were alleged to have negligently operated the cannery, wasting more than 400 tons of salmon, and stiffing approximately 70 Bristol Bay fishermen for landed salmon. Oliver and the two companies entered pleas to environmental misdemeanor charges. Oliver was sentenced to 180 days in jail with 140 days suspended, and probation for three years. The companies were placed on probation for three years, with suspended \$100,000 fines. The Florida company paid nearly \$200,000 in restitution to the fisherman. The Florida company paid this sum to the Attorney General’s Office Collection Unit prior to the change-of-plea hearing.

Major ongoing environmental cases include the prosecution of an individual who sandblasted a large vessel in Kachemak Bay thereby polluting a state Critical Habitat Area and an individual who intentionally dumped a large quantity of heating oil along the Matanuska River while he was stealing a home heating oil tank.

### **SAVE THE DATE**

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|------------|---|
| January 15 | - First day of 2008 Legislative Session |
| March 3-5  | - NAAG Spring Meeting<br>Washington, DC |